THE
UNIVERSITY OF CHICAGO
LAW REVIEW

VOLUME 17
1949–50

THE UNIVERSITY OF CHICAGO PRESS
• • •
THE CAMBRIDGE UNIVERSITY PRESS

PUBLISHED AUTUMN, 1949; WINTER, SPRING, AND
SUMMER, 1950

• • •

COMPOSED AND PRINTED BY THE UNIVERSITY OF CHICAGO PRESS
CHICAGO, ILLINOIS, U.S.A.

v.17 Law

TABLE OF ARTICLES—AUTHORS

BLOUGH, ROY. The Argument Phase of Taxpayer Politics 604
BLUM, WALTER J. The Law and Language of Corporate Reorganization 565
BORKIN, JOSEPH. The Patent Infringement Suit—Ordeal by Trial 634
ECKLER, JOHN. Baseball—Sport or Commerce? 56
FRANK, JOHN P. The United States Supreme Court: 1948-49 1
GREGORY, CHARLES O. The Enforcement of Labor Arbitration Agreements 233
ORLIKOFF, RICHARD M. The Enforcement of Labor Arbitration Agreements . . . 233
RABEL, ERNST. The Sales Law in the Proposed Commercial Code 427
RUBIN, SEYMOUR J. Nationalization and Compensation: A Comparative Approach . 458
SCHWEINBURG, ERIC F. Legal Assistance Abroad 270
SCOLES, EUGENE F. Review of Labor Arbitration Awards on Jurisdictional Grounds . 616
SHADUR, MILTON I. Unemployment Benefits and the "Labor Dispute" Disqualification 294
STEDMAN, JOHN C. The German Decartelization Program—The Law in Repose . . 441
SZILARD, LEO. My Trial as a War Criminal 79

TABLE OF ARTICLES—TITLES

ARGUMENT PHASE OF TAXPAYER POLITICS, THE. Roy Blough 604
BASEBALL—SPORT OR COMMERCE? John Eckler 56
ENFORCEMENT OF LABOR ARBITRATION AGREEMENTS, THE. Charles O. Gregory and Richard M. Orlikoff 233
GERMAN DECARTELIZATION PROGRAM—THE LAW IN REPOSE, THE. John C. Stedman . 441
LAW AND LANGUAGE OF CORPORATE REORGANIZATION, THE. Walter J. Blum . . . 565
LEGAL ASSISTANCE ABROAD. Eric F. Schweinburg 270
MY TRIAL AS A WAR CRIMINAL. Leo Szilard 79
NATIONALIZATION AND COMPENSATION: A COMPARATIVE APPROACH. Seymour J. Rubin 458
PATENT INFRINGEMENT SUIT—ORDEAL BY TRIAL, THE. Joseph Borkin 634
REVIEW OF LABOR ARBITRATION AWARDS ON JURISDICTIONAL GROUNDS. Eugene F. Scoles 616
SALES LAW IN THE PROPOSED COMMERCIAL CODE, THE. Ernst Rabel 427
UNEMPLOYMENT BENEFITS AND THE "LABOR DISPUTE" DISQUALIFICATION. Milton I. Shadur 294
UNITED STATES SUPREME COURT, THE: 1948-49. John P. Frank 1

COMMENTS

ACCEPTANCE AND REJECTION IN CONTRACTS BY CORRESPONDENCE 375
AMERICAN LEGAL DILEMMA—PROOF OF DISCRIMINATION, AN 107
BOND PURCHASES AT DISCOUNT BY "INSIDER" DURING INSOLVENCY 675
COLLECTIVE BARGAINING, GRIEVANCE ADJUSTMENT, AND THE RIVAL UNION . . . 533
CONSIDERATION OF PUNISHMENT BY JURIES 400
CONSTITUTIONALITY OF STATE EQUALIZATION OF PROPERTY ASSESSMENTS IN ILLINOIS . 93
CONSTRUCTION OF INTENT IN LIMITATIONS TO GRANTOR'S HEIRS 87
COPYRIGHT POOLING AND THE ANTI-TRUST LAWS 183
DETERMINATION OF JUST COMPENSATION IN A CONTROLLED MARKET 125
DIVIDEND CREDITS FOR NONCUMULATIVE PREFERRED STOCK 740

DEC 4 1951 HARDY
NOV 28 1951

Export Combinations and the Anti-trust Laws—The Dilemma of the Webb-Pomerene Act 654
Extension of Relief for Unilateral Mistake 725
Free Speech vs. The Fair Trial in the English and American Law of Contempt by Publication 540
Further Retreat from the *Polemis* Doctrine 379
Guilt by Association—Three Words in Search of a Meaning 148
Health Inspection of Private Dwelling without Search Warrant 733
Inter-count Reference on Motion To Dismiss under the Illinois Practice Act 207
Jurisdictional Conflicts under the Natural Gas Act 479
Jurisdiction of States under Blue-Sky Laws 382
Legal Status of Infant en ventre sa mère 395
Limitation on Shipowners' Liability: Substance or Procedure? 388
Limitations on the Availability of Specific Performance 409
Material Witnesses and "Involuntary" Confessions 706
Migratory Divorce in Australia and the United States 134
Patent Pooling and the Anti-trust Laws 357
Policies Underlying the Adjustment of Creditors' Security Rights in Fixtures 745
Post-Kinsey: Voluntary Sex Relations as Criminal Offenses 162
Prescriptive Easements in Illinois 210
Promissory Estoppel—A Basis for Enforcement of Governmental Promises by Third Parties 697
Public Policy Aspects of Administrative Lobbying Contracts, The 491
Revival Judgments under the Full Faith and Credit Clause 520
Right of Minor Child To Sue Parents for Support 200
Rights of Unregistered Shareholders 194
Search for "Reason and Experience" under the *Funk* Doctrine, The . . . 525
Standing To Attack Spendthrift Trust Created by Beneficiary 516
Stockholder Realization of Corporate Earnings and the Income Tax . . . 338
Succession to Trusteeship upon Consolidation or Merger of Corporate Fiduciary 512
Substance of the Right to Counsel, The 718
Taxation of Family Partnership Income—The *Tower* Doctrine Reinterpreted . 503
Temporal Aspects of the Finality of Judgments: The Significance of Federal Rule 60(b) 664
Voting Trusts under the Illinois Business Corporation Act 103
Youth Correction—The Model Act in Operation 683

BOOK REVIEWS

Becker: Der Tatbestand der Lüge [The Operative Facts of Lying] (Max Rheinstein) . 755
Frank: Courts on Trial (Julius Cohen) 557
Gregory and Katz: Labor Law: Cases, Materials and Comments (Harry Shulman) . 228
Grodzins: Americans Betrayed (Franz M. Oppenheimer) 751
Jones: Primer of Intellectual Freedom (Harry Kalven, Jr.) 554
Machlup: The Basing-point System (Ward S. Bowman) 218
Powell: The Law of Real Property, Vol. I (J. Warren Madden) 560
Simpson and Stone: Cases and Readings on Law and Society (Max Rheinstein) . . 422

CASES NOTED

Alden-Rochelle, Inc. v. American Society of Composers, Authors and Publishers . . 183
Black Diamond v. Stewart 388
Comm'r v. Culbertson 503
De Korwin v. First National Bank of Chicago 512
Dick v. United States 375
District of Columbia v. Little 733
Douds v. Local 1250 533
Fred C. Kramer Company, Inc. v. Hebard Storage Warehouses, Inc. 207
Gibbs v. Burke 718
Klapprott v. United States 664
Liberty National Bank v. Hicks 516
Manufacturers Trust Co. v. Becker 675
Moffett v. Arabian American Oil Co. 491
Monarch S. S. Co. v. A/B Karlshamns Oljefabriker 379
Parker v. Parker 200
People v. Perez 706
Poulos v. F. H. Hill Co. 210
Rosenthal v. Burry Biscuit Corporation 194
United States v. Carboloy 357
United States v. Jones 725
United States v. United States Alkali Export Ass'n 654
United States v. Walker 525
Union National Bank v. Lamb 520
Verkennes v. Corniea 395
Warford v. State 400
Williams v. Marion Rapid Transit 395

INDEX DIGEST

A

ADMINISTRATIVE LAW

Loyalty review and guilt by association 157–60

Jurisdictional conflicts under the Natural Gas Act 479–91

ARBITRATION AND AWARD

Enforcement of labor arbitration agreements 233–69

B

BANKRUPTCY

Adjustment of creditors' security rights in fixtures 745–50

Bond purchases at discount by "insider" during insolvency . . 675–83

Determining reorganization value 571–80

Fairness and feasibility in Chapter X reorganizations 580–87

Law and language of corporate reorganization 565–603

C

CARTELS

German decartelization program 441–57

COMPARATIVE LAW

English and American law of contempt by publication . . . 540–53

Legal assistance abroad . . . 270–93

Migratory divorce in Australia and America 134–48

Sales law 430–40

Voluntary sex relations as criminal offenses 162–82

CONDEMNATION

Determination of just compensation in a controlled market . . . 125–34

CONFESSIONS

Involuntary confession resulting from commitment of material witness under John Doe proceedings 706–18

CONFLICT OF LAWS

Full faith to revival judgments 520–25

Limitation of shipowner's liability —substance or procedure . 388–95

CONSTITUTIONAL LAW

Commerce:

Organized baseball as interstate commerce 60–71

Due Process of Law:

All government employee jury not impartial 32

Constitutionality of state equalization of property assessments in Illinois 93–103

Determination of just compensation in a controlled market . . . 125–34

Forced confessions not admissible 30–31

Guilt by association 148–62

Right to speedy arraignment . . . 30

Substance of right to counsel . 718–25

Equal Protection of the Laws:

Invalidity of discriminatory tax on foreign corporations 24–25

Local ordinances against public advertising and female bartenders upheld 25–26

Freedom of Speech:

Contempt by publication . . 540–53

Free speech and breach of peace 27–28

Prohibition of sound trucks not denial of free speech 28–29

The lawyer and free speech . 554–57

Full Faith and Credit:

Ex parte divorce decrees . . . 135–42

Full faith to revival judgments 520–25

Search and seizure:

Health inspection of private dwelling without search warrant 733–40

Inapplicability of Fourth Amendment to states 33–34

CONTEMPT

English and American law of contempt by publication . . . 540–53

CONTRACTS
In General:
Assignment of ballplayer's contracts 74–76
Enforcement by third parties of government contracts . . . 697–706
Offer and acceptance in contracts by correspondence 375–79
Public policy against enforcing lobbying contracts 491–503
Promissory estoppel 697–706
Relief for unilateral mistake . 725–33
Reserve clause in baseball players' contracts 72–74
Remedies:
Availability of specific performance 409–21
Subcontractors' remedies against the United States 697–706

COPYRIGHTS
Copyright pooling and the antitrust laws 183–94

CORPORATIONS
Bond purchases by "insider" at discount during insolvency of corporation 675–83
Dividend credits for noncumulative preferred stock 740–44
Jurisdiction of states under Blue-Sky laws 382–88
Incidents of preferred stock . 740–44
Rights of unregistered shareholders 194–200
Successor trusteeship upon merger of corporate fiduciaries . . 512–16
Taxation of stockholder realization of corporate earnings . . . 338–57
Voting trusts under Illinois Business Corporations Act 103–7

COURTS
In General:
Analysis of work of individual Justices of U.S. Supreme Court, 1948–49 term 43–54
Consideration of punishment by juries 400–409
Courts on trial—book review . 557–60
Contempt by publication . . 540–53
Fact finding by trial courts . . 557–60
Implications of denial of certiorari 36–39
Judicial review of labor arbitration awards 616–33
Tabulation of votes of Supreme Court Justices in civil rights cases, 1948–49 term 35–36
Work of the U.S. Supreme Court, 1948–49 1–55
Federal Courts:
Access to federal diversity jurisdiction by residents of District of Columbia 39–40
Federal rules of evidence—Funk doctrine 525–33
Jurisdiction of federal courts to intervene to enjoin state acts as unconstitutional 41–42

CRIMINAL LAW
Commitment of material witness for John Doe proceedings leading to involuntary confession . . . 706–18
Consideration of punishment by juries 400–409
Contempt by publication . . . 540–52
Failure to support child a crime 203–4
Guilt by association 148–62
Operation of Model Youth Correction Act 683–97
Voluntary sex relations as criminal offenses 162–82

D

DIVORCE
Effect upon duty to support children 200–206
Migratory divorce in Australia and U.S. 134–48

E

EASEMENTS
Easements in overhanging objects acquired by prescription . . 215–17

EMINENT DOMAIN
Differences in compensation for land on navigable and nonnavigable streams 13–18
Just compensation in a controlled market 125–34

EQUITY
Limitations on availability of specific performance 409–21

EVIDENCE
Admissibility of involuntary confessions 706–18
Funk doctrine—rules of evidence in federal courts 525–33
Presumptions and burden of proof concerning prescriptive easements 210–15
Presumptions and burden of proving discrimination 123–25
Proof of discrimination . . . 107–25
Spousal evidence in federal courts 525–33

F

FIXTURES
Creditors' security rights in fixtures 745–50

I

INCOME TAXES
Arguments presented in developing federal tax policy 604–15
Stockholder realization of corporate earnings—capital gains. . . 338–57

INFANTS
Legal status of infant en ventre sa mère. 395–400
Right of minor child to sue parents for support 200–206

INTERNATIONAL LAW
Expropriation of foreign owned private property 458–77
German decartelization program 441–57

J

JUDGMENTS
Setting aside and vacating judgments under Federal Rule 60 (b) 664–75

JURISDICTION
Granting of certiorari by United States Supreme Court 36–39
Judicial review of labor arbitrator's jurisdiction. 616–24
Jurisdictional conflicts under the Natural Gas Act 479–91
Jurisdiction of states under Blue-Sky laws 382–88

JURY
Consideration of punishment by juries 400–409

L

LABOR LAW
In General:
Arbitration and award—judicial review. 616–33
Enforcement of arbitration agreements 233–69
Validity of anti-closed shop statutes 3–5
Validity of state restrictions on concerted union activity 7–9
Collective bargaining, adjustment of grievances, and rival unions 533–40
State Legislation:
Meaning of labor dispute under unemployment compensation statutes 300–307
State restrictions on peaceful picketing 4–7

LEGAL AID
Legal assistance abroad . . . 270–93

LEGISLATION
Creditors' security rights in fixtures under proposed Commercial Code 745–50
Legislation effecting guilt by association 155–57
Model Youth Correction Authority Act 683–97
Proving discrimination under FEPC acts 107–25
Sales law in the proposed Commercial Code 427–40

M

MORTGAGES
Adjustment of creditors' security rights in fixtures 745–50

N

NEGLIGENCE
Legal status of child en ventre sa mère. 395–400
Proximate cause—retreat from the *Polemis* doctrine 379–82

NATIONALIZATION

Yugoslavian nationalization of American property 463–77
Czechoslovakian nationalization of British property 464–77

NEGROES

Proof of discrimination . . . 107–25

O

OIL AND GAS

Jurisdictional conflicts under Natural Gas Act 479–91

P

PARENT AND CHILD

Right of minor child to sue parents for support 200–206

PARTNERSHIP

Taxation of family partnership income 503–12

PATENTS

Patent litigation and threat of litigation as a monopoly device . 634–52
Patent pooling as violation of anti-trust acts 183–94, 357–75
Patent reform 648–52
Validity of patents—contrasting views of Supreme Court and Patent Office 19–24

PERSONAL PROPERTY

Equalization of real property assessments system applied to personal property 100–103

PRESCRIPTION

Easements in overhanging objects 215–17
Prescriptive easements in Illinois 210–17

PROCEDURE

Federal:

Application of forum non conveniens to anti-trust cases 9–11
Necessity of formal charge without delay under Federal Rules of Criminal Procedure 30
Setting aside judgments under Federal Rule 60(b) 664–75

State:

Inter-count reference on motion to dismiss under Illinois Practice Act 207–10
Setting aside judgments in state jurisdictions 664–61

PUBLIC UTILITIES

Jurisdictional conflicts under Natural Gas Act 479–91

R

REAL PROPERTY

Construction of intent in limitations to grantor's heirs 87–93
Prescriptive easements in Illinois 210–17
Worthier title as applied to limitation to grantor's heirs 87–93

RESTRAINT OF TRADE

In General:

Anti-trust laws and the Webb-Pomerene Act 654–64
Application of forum non conveniens to anti-trust cases 9–11
German decartelization program 441–57

Clayton Act:

Basing-point system 218–28
Exclusive contracts lessening competition 11–12

Monopoly:

Patent litigation as monopoly device 634–52

Sherman Act:

Application of Sherman Act to organized baseball 60–71
Copyright pooling and the anti-trust laws 183–94
Patent pooling and the Sherman Act 357–75

S

SALES

Sales law in the proposed commercial code 427–40

SPECIFIC PERFORMANCE

Limitations on availability of specific performance 409–21

STATUTES
Jurisdictions of states under Blue-Sky laws 382–88
Jurisdiction under the Natural Gas Act 479–91
Unemployment compensation statutes and "labor disputes" . 294–337
Voting trusts under Illinois Business Corporations Act 103–7

STATUTE OF FRAUDS
Analysis of provisions of proposed commercial code 433–34

T

TAXATION
Federal:
Arguments presented in developing federal tax policy 604–15
Capital gains and stockholder realization of corporate earnings 338–57
Taxation of family partnership income 503–12
State:
Full value assessment of real property in Illinois 93–103
State taxation of interstate shipments 12–13

TORTS
Further retreat from *Polemis* doctrine 379–82
Liability to infant en ventre sa mère 395–400

TRUSTS
Standing to attack spendthrift trust by settlor-beneficiary . . . 516–19
Successor trusteeship upon merger of corporate fiduciaries . . . 512–16
Voting trusts under Illinois Business Corporations Act 103–7

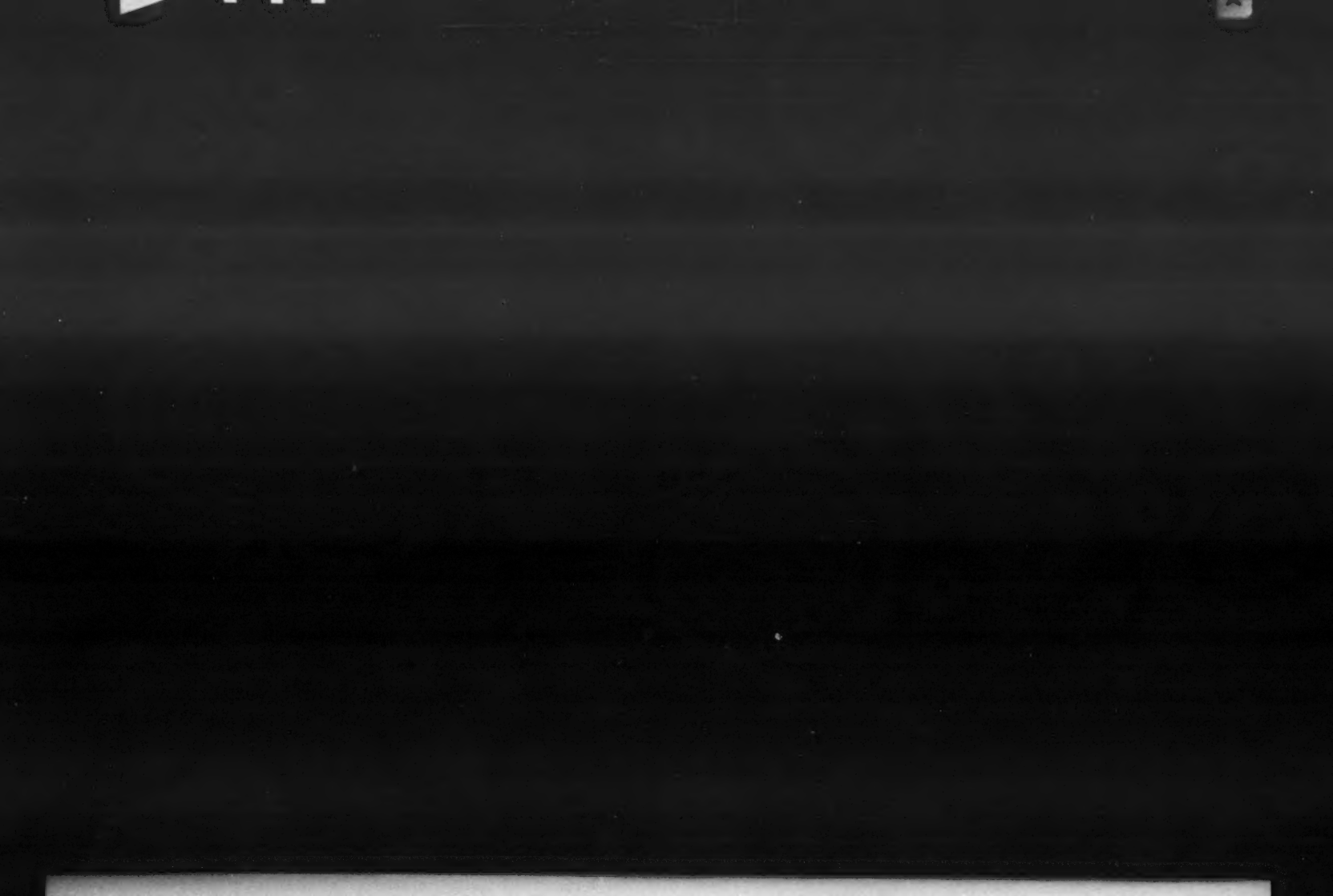
U

UNITED STATES
Sovereign immunity of War Assets Administrator 42

W

WAR
Wartime legislation—Japanese relocation 751–54

WAR CRIMES
Guilt by association 160–62
My Trial as a War Criminal 79–86



1